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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,298	03/26/2004	Sheila Littlehorn	017242-012800US	8269
20350	7590	03/14/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			CONLEY, FREDRICK C	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 03/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/811,298

Applicant(s)

LITTLEHORN ET AL.

Examiner

FREDRICK C CONLEY

Art Unit

3673

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/21/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 13, 15, 18-20, 22-24, 27-35, and 41 are rejected under 35 U.S.C.

103(a) as being unpatentable over U.S. Pat. No. 6,321,403 to Matthews in view of U.S.

Pat. No. 5,367,730 to Sher.

Claim 1, Matthews discloses a support pillow 20 extending from a body region including a support region 16 at least partially surrounding a pressure relief region 18, wherein the support region is configured to support at least a portion of the head of the infant, and wherein the pressure relief region is configured to receive at least a portion of the back side of the head such that pressure applied to the back side of the head is reduced when lying in the supine position. Matthews fails to disclose first and second support cushions removably positionable on the top surface of the body region. Sher discloses a sleep positioner for maintaining an infant in a supine position comprising a body region having a top surface forming loop fasteners, a first support cushion 10 and a second support cushion 10, the first and second support cushions each having a flat bottom surface, each of the flat bottom surfaces having at least one hook fastener, wherein the first and second support cushions are removably positionable on the top surface of the body region to form a space therebetween to receive and maintain the infant in the supine position (col. 2 lines 47-57). It would have been obvious at the time

Art Unit: 3673

of the invention to employ first and second support cushions as taught by Sher in order to prevent the infant from rolling while sleeping on the positioner of Matthews.

Claim 13, wherein the first support cushion has an arcuate upper surface (fig. 1)(Sher).

Claim 15, wherein the support region comprises an insert 52. It is well known to employ a variety of materials for a filler and it would have been obvious to employ a gel in the insert in order to provide a material having less resilience than the support member.

Claim 18, wherein at least a portion of the support pillow is inflatable (col. 6 lines 7-10)(Matthews).

Claim 19, further comprising a wedge 72 coupled with at least a portion of the bottom surface of the body region and a bottom surface of the support pillow, the wedge having an inclined surface for positioning the body of the infant at an inclined angle (Matthews).

Claim 20, it is well known to employ a variety of materials for a filler and it would have been obvious to employ a gel in order to provide a material having less resilience than the support member.

Claims 22 and 24, wherein the wedge is inflatable 64.

Claim 23, wherein the body region has an outer periphery generally having a rectangular geometry (fig. 4)(Matthews).

Claim 27, Matthews discloses all of the Applicant's claimed limitations except for the first support cushion having a length in the range from about 6 inches to about 8 inches and a width in the range from about 2 inches to about 4 inches. It would have been obvious at the time of the invention to have the dimensions stated above since it would have involved a mere change in size.

Art Unit: 3673

Claim 28, wherein the support pillow further includes an arcuate flange 37 disposed on the support region, the arcuate flange configured to maintain the head of the infant on the support pillow (fig. 4)(Matthew).

Claim 29, wherein the arcuate flange is padded.

Claim 30, wherein the pressure relief region comprises a recessed portion in the support pillow (fig. 1).

Claim 31, wherein the recessed portion comprises an aperture 36 extending through the sleep pillow (Matthews).

Claim 32, wherein the recessed portion has a cross-sectional shape that is selected from a group consisting of a circle.

Claim 33, wherein the pressure relief region is less resilient than the support region (col. 5 lines 48-50).

Claim 34, wherein the support pillow has an outer periphery consisting of one of a semicircular geometry, and a rectangular geometry.

Claim 35, wherein the width of the body region 16 is larger than a cross sectional width of the separate padded roll/support pillow 20.

Claim 41, Matthews discloses a method for maintaining an infant in a supine position, the method comprising;

providing a sleep positioner comprising a body region having a top surface a support region 16 at least partially surrounding a pressure relief region 18, and placing an infant in a supine position in a space formed between the first support cushion and the second support cushion, with the infant's head resting on the support region, and with at least a

Art Unit: 3673

portion of the infant's head being disposed over the pressure relief region such that pressure applied to the back side of the head is reduced. Matthews fails to disclose first and second support cushions removably positionable on the top surface of the body region. Sher discloses a sleep positioner for maintaining an infant in a supine position comprising a body region having a top surface forming loop fasteners, a first support cushion 10 and a second support cushion 10, the first and second support cushions each having a flat bottom surface, each of the flat bottom surfaces having at least one hook fastener, wherein the first and second support cushions are removably positionable on the top surface of the body region to form a space therebetween to receive and maintain the infant in the supine position (col. 2 lines 47-57). It would have been obvious at the time of the invention to employ first and second support cushions as taught by Sher and adjusting the first support cushion and the second support cushion to fit against a side of the infant in order to prevent the infant from rolling while sleeping on the positioner of Matthews.

Claims 2-8, 36-39, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,321,403 to Matthews in view of U.S. Pat. No. 5,367,730 to Sher, and further in view of U.S. Pat. No. 5,357,642 to Clute.

Claims 2 and 42, Matthews fails to disclose a sound component. Clute discloses a sleep positioner having a sound component 140 to generate sounds for the infant. It would have been obvious for one having ordinary skill in the art at the time of the

Art Unit: 3673

invention to employ a sound component as taught by Clute in order to provide a physical and emotional comfort for the infant.

Claims 3 and 37, wherein the sound component generates a sound simulating a heartbeat (col. 4 lines 50-54).

Claims 4 and 38, wherein the sound component further includes a timer, the sound component to stop generating the sounds upon the expiration of the timer (col. 4 lines 42-45).

Claim 5, wherein the sound component is at least partially located inside a cavity 136 defined by the first support cushion and wherein the sound component includes an activation mechanism 148 to activate the sound component, the sound component activated by depressing a region of the first support cushion located above the activation mechanism.

Claim 6, wherein the first support cushion comprises a removable cover 122 covering the sound component, wherein removal of the removable cover exposes the sound component.

Claim 7, further comprising a vibrator component at least partially enclosed by the first support cushion (col. 4-5 lines 64-68 & 1-5).

Claim 8, Matthews, as modified discloses all of the Applicant's claimed limitations except for a recordable sound component including a record mechanism. The Examiner takes Official notice of the use of recording mechanism in audio devices and it would have been obvious to one having ordinary skill in the art at the time of the

Art Unit: 3673

invention to employ a recordable sound component in order to provide a variety of audible sounds to comfort the infant.

Claim 36, Matthews discloses a sleep positioner comprising;

a body region having a top surface,

a support pillow 20, extending from at least a portion of the body region,

including a support region 16 at least partially surrounding a pressure relief region 18

and a padded member disposed about a periphery of the support region, wherein the

support region is configured to support at least a portion of the head of the infant, and

wherein the pressure relief region is configured to receive a portion of the back side of the head such that pressure applied to the back side of the head is reduced when lying

in the supine position. Matthews fails to disclose first and second support cushions

removably positionable on the top surface of the body region. Sher discloses a sleep positioner for maintaining an infant in a supine position comprising

a body region having a top surface forming loop fasteners, a first support cushion 10

and a second support cushion 10, the first and second support cushions each having a

flat bottom surface, each of the flat bottom surfaces having at least one hook fastener,

wherein the first and second support cushions are removably positionable on the top

surface of the body region to form a space therebetween to receive and maintain the

infant in the supine position (col. 2 lines 47-57). It would have been obvious at the time

of the invention to employ first and second support cushions as taught by Sher in order to prevent the infant from rolling while sleeping on the positioner of Matthews.

Matthews fails to disclose a sound component. Clute discloses a sleep positioner



Art Unit: 3673

having a sound component 140 to generate sounds for the infant. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a sound component as taught by Clute in order to provide a physical and emotional comfort for the infant.

Claim 39, wherein the first support cushion has a flat bottom surface having at least one hook fastener 18 to removably position the first support cushion on the body region.

Claims 9-12, 40, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,321,403 to Matthews in view of U.S. Pat. No. 5,367,730 to Sher, U.S. Pat. No. 5,357,642 to Clute, and further in view of U.S. Pat. No. 6,054,926 to Deleo.

Claim 9, Matthews fails to disclose a detection mechanism. Deleo discloses a sound component having a detection mechanism and low power transmitter 32. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a detection mechanism and transmitter wherein the detection mechanism transmits a low power signal to the circuitry of Matthews to activate the playback mechanism in order to provide constant monitoring and comfort the infant back to sleep.

Claim 10, wherein the recordable sound component is located in a cavity 136 defined by the first support cushion (Clute).

Claims 11, 40, and 43, further comprising a microphone 32 to capture sounds made by the infant and to transmit the sounds to an external receiver (col. 3 lines 34-37)(Deleo).

Claim 12, wherein the microphone is located at least partially within the support pillow.

Art Unit: 3673

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,321,403 to Matthews in view of U.S. Pat. No. 5,367,730 to Sher, and further in view of U.S. Pat. No. 5,551,108 to Butler.

Claim 14, Mathews discloses all of the Applicant's claimed limitations except for a pocket. Butler discloses a support cushion having a pocket (col. 5 lines 20-25). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a pocket in order to keep various objects, such as a pacifier.

Claims 16-17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,321,403 to Matthews in view of U.S. Pat. No. 5,367,730 to Sher, and further in view of U.S. Pat. No. 6,116,691 to Reece.

Claims 16-17 and 21, Matthews discloses all of the Applicant's claimed limitations except for having a shape retaining material. Reece discloses a support member having a shape retaining material, such as visco-elastic foam (col. 3 line 9). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a shape retaining material in order to provide a comfortable support.

Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,321,403 to Matthews in view of U.S. Pat. No. 5,367,730 to Sher, and further in view of U.S. Pat. No. 5,450,640 to Patton et al.

Claims 25-26, Matthews discloses all of the Applicant's claimed limitations except for the bottom surface having a waterproof material. Patton discloses a positioner wherein a bottom surface of the body region is a waterproof material, such as vinyl (col. 4 lines 35-40).

Art Unit: 3673

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 703-308-7468. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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